

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITED STATES OF AMERICA

v.

VERONICA LYNN WORTMAN

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CRIMINAL NO. 6:02-CR-6-1

**REPORT & RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

On February 22, 2013, the Court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant Veronica Lynn Wortman. The government was represented by Mary Ann Cozby, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by Wayne Dickey.

Defendant originally pled guilty to the offense of Possession With Intent to Distribute Methamphetamine, a Class A felony. The offense carried a statutory maximum imprisonment term of life. The United States Sentencing Guideline range, based on a total offense level of 35 and a criminal history category of II, was 188 to 235 months. Judge John Hannah sentenced Defendant to 90 months imprisonment followed by 5 years of supervised release subject to the standard conditions of release, plus special conditions to include drug treatment. On October 23, 2008, Defendant completed the term of imprisonment and began her term of supervised release.

On February 13, 2012, Judge Leonard Davis modified the conditions of supervised release to include a special condition of 180 days halfway house placement. On April 29, 2012, Judge Leonard Davis further modified Ms. Wortman's conditions to include mental health treatment.

In its petition, the government alleges that Defendant violated her terms of supervised release by possessing methamphetamine; failing to report for drug testing; stalling drug testing; failing to report for mental health treatment; and using marijuana.

Under the terms of supervised release, Defendant was prohibited, in relevant part, from unlawfully using a controlled substance. Fifth Circuit case law permits a court to find that illicit drug use constitutes possession. If the Court finds by a preponderance of the evidence that Defendant violated the conditions of her supervised release by possessing methamphetamine, Defendant will have committed a Grade B violation.¹ U.S.S.G. § 7B1.1(a). Upon a finding of a Grade B violation, the Court shall revoke a term of supervision. U.S.S.G. § 7B1.3(a)(1). Considering Defendant's criminal history category of II, the Guideline imprisonment range for a Grade B violation is 6 to 12 months. U.S.S.G. § 7B1.4(a). If the Court finds by a preponderance of the evidence that Defendant violated the conditions of her supervised release by failing to report for drug testing; stalling on drug testing; failing to report for mental health treatment; and using marijuana, Defendant will have committed a Grade C violation. U.S.S.G. § 7B1.1(a). Upon a finding of a Grade C violation, the Court may: (A) revoke probation or supervised release; or (B) extend the term of probation or supervised release and/or modify the conditions of supervision. U.S.S.G. § 7B1.3(a)(2). Considering Defendant's criminal history category of II, the Guideline imprisonment range for a Grade C violation is 4 to 10 months. U.S.S.G. § 7B1.4(a).

At the hearing, the parties indicated they had come to an agreement to resolve the petition whereby Defendant would plead true to the government's petition. In exchange, the government agreed to recommend that Defendant serve 6 months with no supervised release to follow.

Pursuant to the Sentencing Reform Act of 1984, and the agreement of the parties, the Court **RECOMMENDS** that Veronica Lynn Wortman be committed to the custody of the

¹ Defendant will also be in violation of Texas Health and Safety Code § 481.115.

Bureau of Prisons for a term of imprisonment of 6 months with no supervised release to follow.
The Court further **RECOMMENDS** that the place of confinement be FMC Carswell, Texas.

Defendant has waived her right to object to the findings of the Magistrate Judge in this matter so the Court will present this Report and Recommendation to District Judge Leonard Davis for adoption immediately upon issuance.

So ORDERED and SIGNED this 25th day of February, 2013.



JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE